

**U.S. Senate Republican Policy Committee**  
**Larry E. Craig, Chairman    Jade West, Staff Director**

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**The 2<sup>nd</sup> Amendment: “Central to Preserving Liberty”**

**John Ashcroft’s Defense of  
the Second Amendment**

***Statement of Senator John Ashcroft, Chairman of the Constitution, Federalism and Property Rights Subcommittee of the Senate Judiciary Committee, September 23, 1998:***

Good afternoon and welcome to our hearing. We meet today to discuss one of the most important – and yet most neglected – provisions in our Constitution – the Second Amendment.

Like the rest of our founding document and Bill of Rights, the Second Amendment is profound, yet brief. It provides in full that: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Unlike most constitutional provisions, which simply outline a right or power, the Second Amendment first underscores the importance of the right secured. The Second Amendment speaks in straightforward and broad terms about both the need for gun ownership and the fact that the right to gun ownership “shall not be infringed.”

In recent years, some have argued that the very fact that the Second Amendment first emphasizes the importance of the right to gun ownership and of the militia somehow lessens the rights of individuals to own firearms. They seem to argue that because the Constitution expressly recognizes that gun ownership promotes the formation of militia, that there is no right to gun ownership for any other purpose – in other words, they contend that the Second Amendment confers rights only on the States, not on individuals.

This argument makes no sense to me. It conflicts with the both the text of the Constitution and the reported views of the Founders. Nonetheless, the argument has found a receptive audience in the lower federal courts. This conflict of views has prompted today’s hearing: “Whose Right to Keep and Bear Arms? The Second Amendment as a Source of Individual Rights.”

Although there is a lively current debate over whether the Second Amendment secures individual rights, reflection on the historical evidence makes it clear that this debate is a relatively new one. Our Constitution’s Framers understood the right to keep and bear arms to be personal and central to preserving liberty. In *The Federalist* 46, James Madison, who later drafted the Second

Amendment, argued that “the advantage of being armed, which the Americans possess over the people of almost every other nation,” would deter the new central government from tyranny. The new Constitution respected individuals’ rights, Madison wrote, whereas the Old World governments were “afraid to trust the people with arms.”

This was one point on which the Federalist and Anti-Federalists could agree. Though he was strongly critical of Madison in the course of many other constitutional disputes, Richard Henry Lee wrote, “To preserve liberty, it is essential that the whole body of the people always possess arms . . .” Inclusion of “the right of the people to keep and bear arms” in the Bill of Rights made it clear that the Framers thought that firearm ownership was an individual right. Madison used the phrase “right of the people” – as he did elsewhere in the Bill of Rights – to indicate that the right to keep and bear arms was an individual right. “The right of the people to keep and bear arms” cannot be dismissed as a collective right of the people without raising questions about the First and Fourth Amendments – both of which use the phrase “right of the people” to confer rights on individuals.

The structure of the Constitution also lends support to the view that the Second Amendment is a guarantee of individual rights. The right to bear arms is listed early in the Bill of Rights with other, undeniably personal liberties, such as the right to free speech, free exercise of religion, and assembly, as well as the freedom from unreasonable searches and seizures.

Even more persuasive evidence comes from Madison’s original proposal to interlineate the new rights within the Constitution’s text, rather than placing them at the end of original text. Madison did not place the right to bear arms in Article I, Sec. 8, which deals with the Congress’s power to organize and call out the militia. Instead, Madison placed the First and Second Amendments immediately after Article I, Section 9, clause 3, which includes the Constitution’s original guarantees of individual liberties – freedom from *ex post facto* laws and bills of attainder.

[ . . . ]

The text, structure, and history of the Second Amendment strongly indicate that the Framers knew exactly what they were doing – namely, protecting an important individual right to be enjoyed by all American citizens for all times.

Indeed, the Second Amendment – like the First – protects an important individual liberty that in turn promotes good government. A citizenry armed with the right both to possess firearms and to speak freely is less likely to fall victim to a tyrannical central government than a citizenry that is disarmed from criticizing government or defending themselves.

Anyone who has fired a gun knows the awesome feeling of responsibility and empowerment that comes with it. Gun ownership provides an ability to protect your family and your property that promotes individual liberty and diminishes dependence on the government. Gun ownership also fills an individual with a sense of responsibility and of the need to ensure public safety through the proper use

of the firearm. This sense of empowerment no doubt was even stronger among members of the Founding generation, many of whom lived great distances from their nearest neighbor and even greater distances from the nearest officer of the peace.

When my son Jay and I work on sighting in his gun on our farm, we experience the empowerment that comes with responsible gun ownership first hand. Based on our own experience, it is hard for me to conceive of the Second Amendment as anything other than a guarantee of individual liberty.

[. . .]

Before we hear from the Ranking Member and our witnesses, let me add one point. Our oath of office requires Members of Congress to support the Constitution – the whole Constitution, not just the rights that Members support or the ones that correspond with their personal politics. On the Subcommittee and in the Senate as a whole we have fulfilled our oath by considering the First Amendment implications of campaign finance reform and the Fourth Amendment problems with the Administration’s encryption policy.

However, too often, Members have simply ignored the Second Amendment implications of various proposals to tax, to regulate, and even to ban firearm possession. Indeed, some of the Members who seem most willing to defend the newly-created individual rights appearing nowhere in the Constitution are the same Members that deny the existence of this fundamental right that our Framers put in black and white in our founding charter.

Hopefully, events like today’s hearing will remind us that patriots such as James Madison saw an armed citizenry as essential to good government, not as a threat to it. In Madison’s view, the newly-formed central government would not become an enemy of liberty because, unlike the Old World governments, it was not “afraid to trust the people with arms.” I wonder if Madison could say the same of our government today.

I believe it is time that we once again recognize the Second Amendment for what it is – a protection of individual liberty. If opponents of gun rights want to argue in favor of repealing the Second Amendment, I would welcome that debate. For whatever the outcome, that discussion would do far less damage to our constitutional structure than if Congress continues to act as if the Second Amendment was written in disappearing ink.

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